IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2901 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA
and
Hon'ble MR.JUSTICE N.G.NANDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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RAYMON GELATINE FORMERLY AS RAYMON GLUES & CHEMICALS
Versus
UNION OF INDIA

Appearance:
1. Special Civil Application No. 2901 of 2001
MR PARESH M DAVE for Petitioner No. 1-2
MR ASIM J PANDYA for Respondents

CORAM : MR.JUSTICE M.R.CALLA
and
MR.JUSTICE N.G.NANDI

Date of decision: 06/07/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.R.CALLA)

1. Rule. Mr.P.M.Dave appears for petitioners. Mr.Asim J.Pandya appears for respondents and waives service of rule on behalf of respondents. With the consent of the learned advocates for the parties, matter is finally heard today.

2. The learned advocate for the petitioner has invited our attention to the order dated 24.10.1997 passed by the Customs, Excise, Gold (Control) Appellate Tribunal, West, Regional Bench at Mumbai holding that there was no reason to interfere with the conclusion of the Commissioner in the impugned order, i.e. the goods in question were correctly classifiable under Sub-heading 2302.00 of CETA. Against this judgment and order, dated 24.10.1997 passed by the CEGAT, the matter was taken to the Supreme Court by the Department, but the Civil Appeal was dismissed on 5.11.1998.

3. Mr.Dave also has invited our attention to the decision of the Division Bench of this Court between the present petitioner and respondent as was rendered on 17.3.1999 in Special Civil Application 3411/97 in favour of the petitioner and it is noted that the Special Leave Petition preferred by the department against the decision dated 17.3.1999 in Special Civil Application No.3411/97 has been dismissed by the Supreme Court on 19.3.2001 as the SLP was delayed by 584 days. However, the decision dated 17.3.1999 in Spl.C.A.No.3411/97 reported in 1999(34) RLT 234 (Guj) has attaining finality in petitioner's favour on the point of classification of goods in question.

4. In this view of the matter, there is no question of initiating any action now against the petitioner on the ground that the Di-Calcium Phosphate of Animal Feed Grade is not classifiable under the Sub-heading 2302.00 of the Scheduled to the Central Excise Tariff Act, 1985. Accordingly show cause notice issued by the respondent Nos 4 & 5 at annexure "E" collectively can not be sustained and the same are set aside. This petition is allowed to the above extent and rule is made absolute accordingly with no order as to costs.

6.7.2001 (M.R.CALLA,J)

mty (N.G.NANDI,J)